IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.169 OF 2006

Shrikant Anna Hingalje ...Appellant
Vs.
Shripal Bharma Hingalje & Ors. ...Respondents

Mr N.J. Patil for the Appellant.
Mr P.D. Dalvi for the Respondent No.1.

CORAM : A. S. OKA, J.
DATE : MARCH 07, 2006.

P.C.:

1. Heard Shri Patil appearing for the Appellant-original Defendant No.1. Suit was filed by the Respondent No.1 through his next friend. Suit is for partition. The Respondent No.1 is the real brother of the father of the Appellant. There is a decree for partition passed by the Trial Court and confirmed by the Appellate Court.

2. Shri Patil appearing for the Appellant submitted that there was no enquiry held as required by mandatory provisions of Rule 15 of Order 32 of the Code of Civil Procedure, 1908 to determine whether the Respondent No.1 was suffering from any mental infirmity. Placing reliance on the decision of the Apex Court reported in (2003) 3 Supreme Court Cases, Page 225 (Kasturibai V. Anguri Chaudhary) he submitted that there is a jurisdictional error committed by the Trial Court. He submitted that in any event there is oral surrender by the Respondent

No.1 of his share in the joint property. He, therefore, submitted that the decree passed by the Trial Court is illegal.

3. I have considered the submissions. A medical practitioner was examined in the Trial Court who deposed about mental condition of the Respondent No.1-Plaintiff. Medical Officer deposed that the Respondent No.1 is mentally retarded from his childhood. Medical Officer denied the suggestion that the decease was curable. On the basis of the evidence of the Medical Practitioner, the Trial Court came to the conclusion that the Respondent No.1 was of unsound mind. The said finding of fact has been confirmed by the Appellate Court. The examination of the Medical Practitioner shows that there was an enquiry held by the Trial Court to decide the status of the Respondent No.1. There are some admissions on the part of the Appellant himself to the effect that the Respondent No.1 is not of sound mind. There is no reason to interfere with the finding of fact recorded by the Courts below.

4. So far as theory of oral surrender of share by the Respondent No.1 propounded by the Appellant is concerned, it is obvious that there could not have

been valid oral surrender of the share by a person of unsound mind and that is the precise finding recorded by the Appellate Court.

5. No substantial question of law arises in the Second Appeal and the same is dismissed.

JUDGE